

JUL 23 1971

"INDIANS AND THE LAW"

An Address by:

Mr. Alfred Scow
Crown Prosecutor
City of New Westminster, B. C.

Excerpt from the Annual Meeting
December 2nd to 4th, 1966 held in
Vancouver, B. C.
Indian-Eskimo Association of Canada
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Toronto 2, Ontario

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"INDIANS AND THE LAW"

ADDRESS BY: MR. ALFRED SCOW, CROWN PROSECUTOR, CITY OF NEW WESTMINSTER, B.C.

I have been asked to speak on "Indians and the Law". As indicated in my introduction, I am a lawyer, for the past year and a half acting as Crown Prosecutor in the City of New Westminster; and I might say, at the risk of being accused of bragging, that the opportunities that are opening up for Indians today can be seen. The City of New Westminster saw fit to hire me as Prosecutor. Up to the time I was hired there was no permanent prosecutor, and when 45 people applied I have the feeling I was selected because I was a lawyer and not because I was an Indian. So opportunities are opening up for all of us. As someone has indicated, all Indians have to do is obtain qualifications and then pursue our goals.

The big question at this Conference is "Are there opportunities for Indians within the law?"

First, who is an Indian? By definition of the Indian Act, an Indian is a person who is registered as an Indian. There are exceptions, such as Indians who become enfranchised; another exception is an Indian woman who chooses to marry a white man. There is in the definition of Indians a failure to include all persons of Indian ancestry; Indians who were born as Indians can, simply by marriage, lose their status; Indians who have white fathers and Indian mothers also lose their status. The distinction does not end there, because there are a lot of Indians today living off reserves who were born into Indian families but chose to live off reserves for better opportunities for themselves and their children; by definition they are still Indians but not considered as such by the Department because

many services available to Indians on the reserves are not available to these people.

These benefits are very marginal. There is a move today to initiate changes, thanks to the efforts of such organizations as the Native Brotherhood of B.C. and meetings of this kind where we can point out what we do want. I think we all recognize that changes are coming about.

I believe that one of the most disturbing factors to the growth and development of Indians as citizens of this country is that we are governed by an Act called the Indian Act. This Indian Act was drafted many, many years ago and speedily passed for the purpose of protecting Indians. Some of the iniquitous provisions are that decisions of the Indian bands are subject to the approval of the Minister. Our Minister is the Minister of Indian Affairs and Northern Development; prior to that, the Minister of Citizenship and Immigration; and prior to that, the Minister of Mines and Resources. We have seen progress in that now we are recognized by the government as people, instead of minerals and resources.

I believe that the continuation of this restriction does prevent Indians from making decisions that they know are right for themselves. I know too, from past experience, that once an Indian Agent says "no" to a request of a band council or Indian chief, it stops with the Indian Agent who, by definition, is the Minister as far as our reserves are concerned. He is the authority by his position. Most of our people up to now have not realized that there were ways and means by which we could appeal to the Commissioner over and above the Indian Agent; and if the Indian Commissioner supported the stand of the Indian Agent, we also had the right of appeal

to the Director of Indian Affairs in Ottawa. Failing these things, we do have the right to go to the Minister and members of Parliament in Ottawa, because not too long ago we became citizens of Canada and, like all citizens, we have a vote and a say in who gets elected to Ottawa. Therefore like all other citizens, when we have a grievance we have the right to go to Parliament which passes legislation. By the efforts of organizations like the many native organizations, most of our people are now becoming more enlightened as to the kinds of things that everyone else takes for granted.

I think the Indian Act perpetuates our status as "second class" citizens. If the Indian Act is to be maintained, I feel as Indians we should say what that Act should contain. There are several organizations and people who think the Indian Act should be abolished. Perhaps this will come; but if it does come, it should come at the request and demands of the Indians and not some other group. I think we as Indians are coming to the stage where we are beginning to appreciate our legal and political status so that we can take appropriate action.

How does this legal status affect our opportunities? We have the federal vote and it has been stated that we have now the provincial vote; so that our status extends not only to the federal field but also to the provincial field. So we do have a status provincially as well. This means that our position in the past few years has changed. When we approach the government we no longer sit back and wait for the favors. We know our ground is sound, and the more we can appreciate this the further we can move in the years to come.

But the right to vote federally and provincially is also a responsibility. We must determine what various politicians stand for and then make our own choice. We should never be accused of being sheep; because one Indian votes for one party or person, we do not necessarily need to follow.

As far as statutes are concerned I could go on for hours. I will not do that, but will try to point out that Indians who come into conflict with the Criminal Code of Canada are all subject to the same penalties as anyone. We have equal status in the Criminal Code of Canada. We cannot expect any exceptions. At the same time, we do have rights under the Criminal Code. We have a right to defence, a right to a fair trial, a right to demand that the prosecution prove its case.

I know that the Crown is often hard put to prove its case; but as suggested earlier, a lot of Indians are not aware that when they plead "not guilty" the onus is on the Crown to prove its case. The person pleading "not guilty" is saying "prove that I did this illegally under the terms of the Criminal Code". Therefore it is not a crime to plead "not guilty", because it is up to the judge to determine whether or not you are criminally guilty under the law.

I urge all of you to appeal to organizations such as the Native Brotherhood, I.E.A., etc. to make funds available to Indians who cannot afford legal counsel. We do have a right to proper defence in order that we do have a fair trial. The Bill of Rights of Canada provides some of these things. One of the inequalities that may arise is out of the fact that a lot of Indians are not aware of their rights and do not have funds to make sure those rights are protected. Therefore interested organizations can meet

this problem.

In civil courts this is different. Any Indian can enter into a contract and it can be a binding contract. The Indian can be sued if there is a violation of that contract. On the other hand, the Indian can sue anyone who does not live up to the contract. Therefore we do have equal rights and these rights will be upheld.

Again, it is a two-way street. We have responsibilities and obligations under the law and no one is presumed not to know the law. Even if you break a law you did not know existed, you can be found guilty. I think it is important that our Indian people are made aware of these rights because they do exist.

One of the present anomalies in our law is the fact that we do not own land. I used to go to the Land Registry Office and check titles, and I would look back at the titles of people who owned property but nowhere in land registered titles do these titles go back to the Indians. The reason for this is the fact that in the union of British Columbia and the rest of Canada by the federal government, the lands of the province were turned over to the federal government to be held in trust for the use and benefit of the Indian bands, with additional provision that if any one of those bands became extinct the land reverted back to the province. There has now been a recognition of the Aboriginal Title of Indians to lands in Canada and British Columbia. This principle was supported by a decision of the Supreme Court of Canada. If Indians have a right to enter into treaties for the lands, therefore it follows that the Indians must have had a recognized legal right to enter into treaties with the government in exchange for the

title to the land. Most of the tribes in B.C. do not have treaties; most of the titles of bands in B.C. have ^{not} been extinguished. As many people here know, this will be the subject of a long legal battle. Presently we are thinking in terms of negotiations. I know from my experience in law that this is not going to come easily.

The next move the government is going to make is this: we recognize your rights - now you prove how much those rights include. This is going to be the biggest job we must face. I do not think the government is going to give up without a fight. These are the things that we must anticipate. I do not doubt that we are going to be successful as long as we have the determination to know that what we are seeking is right, and I say it is right because I have studied English history from which our jurisprudence is derived.

It has long been proven that occupation gives a legal right to the land. I know that somehow the thinking is that we have been "taken" but do not know how. I suggest that this is one area in which change in attitudes can be brought about, but we must fight for it. This is the way of the law - we must prove our case. We cannot expect an overnight victory, but I think it is inevitable that we will get it as long as we have the strength to carry the law to them. This means we must retain the best possible legal advice, and that is lawyers with experience.

I feel it is important for all Indian people here to find ways and means to become aware of our legal rights and legal status. We do not have to think of ourselves as second-class citizens. We can bring about changes in the Indian Act and have our members of parliament support our cause, because it

is a right and just cause. All provincial statutes apply equally to Indians. In all my years of searching through statutes in the library, I have never come across a statute called "the White Act", and I think it is time we brought about a change with the support of white people here today.

I might say again that the subject of "Indians and the Law" is a very broad one, and I cannot do justice to it tonight; but I do know there are movements in this country not only by the Indians but also by the government. I belong to a National Committee on Indians and the Law. This Committee was formed over two years ago and in the past eight months field workers have been sent around to the various communities in Canada, and the Committee will be meeting next March to study the findings of the field workers and make recommendations to the government. The Committee's recommendations will probably not amount to very much; I think that some of them will be taken seriously, but I think that we as interested people are going to have to push further to bring about the implementation of the recommendations.

I say to you in closing that we do have rights but we also have responsibilities. We cannot expect these rights to be handed to us but are going to have to fight for them. In doing this, we can be assured that the future of Indians in B.C. and other parts of Canada will be secure, and also that our white brothers and sisters with similar interests as ours will be able to sit back and say "it's about time". I look forward to the future with a great deal of optimism because of the enthusiasm and response I have experienced in the last two days.

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